

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 253

October 30, 1959

BANKS AND FINANCIAL CORPORATIONS – INTEREST – ACCRUAL DATE WHEN

Syllabus:

When a notice of proposed assessment is issued to a bank or financial corporation for the amount of the second installment, the second installment due date is the proper date for the accrual of interest whether (1) the taxpayer was not properly classified as a bank or financial corporation at the time of the rate determination, or (2) the taxpayer was properly classified as a bank or financial corporation at the time of rate determination but the second installment notice was inadvertently never mailed.

The problem is whether or not Section 25901(b) of the Bank and Corporation Tax Law is applicable in this situation. This section is substantially the same as Section 18688 of the Personal Income Tax Law and the first sentence of Section 292(a) of the Internal Revenue Code of 1939. The purpose of Sections 18688 and 292(a) is to equalize the interest burden between installment and noninstallment taxpayers. See Legal Memorandum 072; (CCH 201-026; P-H 58, 776) Mim. 3794, IX-1 CB 162.

With minor exceptions, all banks and financial corporations pay their franchise taxes in two installments. The taxpayers who receive timely notice of the second installment but do not make payment within 15 days as provided in Section 25552(a) are only charged interest from the due date of the second installment. To accrue interest from the due date of the first installment on a notice of proposed assessment issued to cover the financial rate would place an unequal interest burden on taxpayers assessed in that manner and defeat the purpose of Section 25901(b).

The installment payments included in the Federal law, from which our section was derived, were payments which a taxpayer could elect to make even though the total tax could just as well have been paid. In the present situation the two installments differ from one another. The first is a payment of the normal franchise tax, while the second is paid in lieu of personal property taxes. The two are not equal. Furthermore, the taxpayer cannot elect to pay the total amount at the due date of the first installment since the amount of the second installment is not determined until after that time.